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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,439	03/29/2001	Tsuyoshi Miura	FUJR 18.498	1744

26304 7590 11/16/2005

KATTEN MUCHIN ROSENMAN LLP
575 MADISON AVENUE
NEW YORK, NY 10022-2585

EXAMINER

JERABEK, KELLY L

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/821,439	Applicant(s) MIURA ET AL.	
	Examiner Kelly L. Jerabek	Art Unit 2612	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.


REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: 1) Applicant's arguments (After Final Amendment page 5) state that since the Sugimoto reference states that the microcomputer (32) initializes the shutter speed to 1/250 second as a middle speed in step S5 it teaches away from the claimed feature of "making an initial setting of a shutter speed of said camera to the slowest possible value in order to utilize external illumination other than illumination of said illumination unit". The Examiner respectfully disagrees. Claim 1 states that when said luminance examining unit determines that the amount of light detected by said camera and stored in the image pickup plane is not appropriate for suppressing disturbances in said image, when a predetermined time elapses since said amount of light becomes appropriate for suppressing disturbances in said image making an initial setting of a shutter speed of a camera to the slowest possible value in order to utilize external illumination. Although the Sugimoto reference states that at step S5 the shutter speed is set to 1/250 second as a middle speed this does not mean that the reference teaches away from the claimed invention. Sugimoto states that in step S11 the microcomputer (32) compares the luminance evaluation value (Vy) with a target evaluation value (Vt) and causes that flash lamp (38) to emit light if needed (col. 9, lines 21-67; col. 10, lines 1-12). In step S13 the microcomputer (32) controls the shutter speed so that the luminance evaluation value (Vy) is consistent with the target evaluation value (Yt) (col. 9, lines 21-49). The shutter speed is set in response to the comparison of the luminance evaluation value (Vy) and the target evaluation value (Vt). Therefore, the Examiner is reading this feature as when a luminance examining unit determines the amount of light is not appropriate for suppressing disturbances making an initial setting of a shutter speed to the slowest possible value in order to utilize external illumination other than illumination of said illumination unit. The microcomputer (32) also determines if the calculated shutter speed is lower than the minimum shutter speed (1/30 sec.) and in a case where the calculated shutter speed is lower than the minimum the shutter speed is forcedly set into the minimum value (col. 9, lines 33-49). The claims are not directed to the first shutter speed settings and illumination duration settings of the camera, rather they are directed to the shutter speed settings and illumination duration settings in response to a determination of a luminance examining unit. Therefore, the arguments regarding the first settings of the Sugimoto reference are not relevant and the reference still reads on the claims.

2) Applicant's arguments (After Final Amendment page 6) state that since the Sugimoto reference states that the flash lamp is initialized to non-emission time it teaches away from the claimed feature of "the initial setting of a duration of illumination of said illumination is set to the shortest time which can provide sufficient amount of light for image processing". Although the Sugimoto reference states the flash lamp is initialized to non-emission time, this does not mean that the reference teaches away from the claimed invention. Sugimoto states that in step S11 the microcomputer (32) compares the luminance evaluation value (Vy) with a target evaluation value (Vt) and causes that flash lamp (38) to emit light if needed (col. 9, lines 21-67; col. 10, lines 1-12). In step S13 the microcomputer (32) controls the shutter speed so that the luminance evaluation value (Vy) is consistent with the target evaluation value (Yt) (col. 9, lines 21-49). The shutter speed is set in response to the comparison of the luminance evaluation value (Vy) and the target evaluation value (Vt). Next, it is determined if the most suitable exposure is obtained at the controlled shutter speed and a light-emission is either performed (in accordance with calculated light-emission amount Q) or not performed depending on whether or not a suitable exposure is obtained (col. 10, lines 1-12). Thus, it can be seen that in response to a luminance examining unit an initial setting of a duration of illumination of an illumination unit is set to the shortest time (either no emission or an emission according to the calculated light-emission amount Q) which can provide sufficient amount of light for image processing. The claims are not directed to the first shutter speed settings and illumination duration settings of the camera, rather they are directed to the shutter speed settings and illumination duration settings in response to a determination of a luminance examining unit. Therefore, the arguments regarding the first settings of the Sugimoto reference are not relevant and the reference still reads on the claims..

KLJ



NGOC-YEN VU
PRIMARY EXAMINER